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## Spiritual Care in Swiss Public Institutions

The way spiritual care has been conceived of and organized in Switzerland is firmly rooted in the specific Swiss understanding of the state, its direct democracy, federal structure, the relationship between church and state, and the high esteem for fundamental rights. In recent years, due to social changes and changed requirements, spiritual care in Swiss public institutions has been in a process of development and realignment. Thus, after some preliminary remarks on the political background (I.), I shall then explore the topic of spiritual care in the realms of the public health system (II.), the public education system (III.) and the armed forces (IV.).

### I. Preliminary Remarks on Direct Democracy, Fundamental Rights and the Relationship Between Religion and State in Switzerland

In Switzerland '[l]'état, c'est nous! Les citoyens'. This catchphrase – which I had already used last time I was invited to Prague and which was used a few years later by *Micheline Calmy-Rey* (the former Swiss President) to describe Swiss direct democracy – comprises in a nutshell the specific Swiss understanding of the state. It means, in Switzerland, *we*, the citizens, are the state, it is *us*, the citizens, who form the State. This understanding of the state and its citizens, as exercised in direct democracy and reflected in the many issues put to the popular vote, is very different from an understanding of the state and its citizens as conceived of in a representative democracy.

The German criminal law professor and famous writer, *Bernhard Schlink*, remembers an incident during his high school years, when his Swiss mother asked him what he had learned in school that day, to which he answered: 'That's too complicated to explain.' His mother replied, *Schlink* recalls: 'In a direct democracy, you have to be able to explain everything in simple language.' *Schlink* claims that it is this un-

derstanding of the state that has shaped his use of language both as a lawyer and as a world-famous writer.<sup>1</sup>

The answer given by *Schlink's* mother exactly corresponds to the way *Eugen Huber* phrased the definitive draft of the Swiss Civil Code, which he introduced to parliament in 1904. His idea was use to a kind of legal language that enabled each and every citizen to understand it, one that made the law accessible to everyone.

To sum up: The Swiss specific understanding of the state is directly reflected in its understanding of democracy as *direct* democracy, which in turn necessitates all relevant issues to be explained in a way ordinary citizens are able to comprehend.

I shall now proceed to the relationship between state and religion in Switzerland: The first problem one encounters is, however, that neither Theology nor Philosophy are able to provide us with a clear-cut definition of the term 'religion'. Yet, how are we to define the relationship between state and religion, if we do not know what is actually meant by the term 'religion'? My colleagues and I were faced with this problem when writing a book on the public recognition of Islam and other religious groups.<sup>2</sup> During our work on the book we came to appreciate the historical background against which the Federal Constitution of the Swiss Confederation (Bundesverfassung, short: BV) tries to resolve the issue. It declares in Art. 72: 'The regulation of the relationship between the church and the state is the responsibility of the Cantons.'<sup>3</sup> It strikes the eye that the Swiss constitution should mention the church first and the state second. In my view, the reason behind this is that the relation between church and state was shaped by the fact that they both evolved simultaneously. The Christian Church was not simply one religion beside others. In actual fact, the church had a significant influence on the development of public and governmental institutions in Europe. For example, it was the theologian and philosopher of law, *Thomas Aquinas*, who first introduced the concept of a separation between church and earthly powers<sup>4</sup>. Concerning the relationship between church and earthly powers (i. e. what we now call state), he claimed the autonomy of earthly realities and distinguished two levels of jurisdiction according to their 'finis ultimus', i. e. their ultimate purpose. According to *Aquinas*, the church has

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1 *Schlink*, in: 'Musik für einen Gast', presented by *Hansjörg Schulz*, Radio SRF Kultur, broadcast 9<sup>th</sup> December 2018, 12.38–13.45: [www.srf.ch/sendungen/musik-fuer-einen-gast/bernhard-schlink-schriftsteller-und-jurist-2](http://www.srf.ch/sendungen/musik-fuer-einen-gast/bernhard-schlink-schriftsteller-und-jurist-2).

2 *Loretan/Weber/Morawa*, *Freiheit und Religion. Die Anerkennung weiterer Religionsgemeinschaften in der Schweiz*, RRD Bd. 17, 2014, Wien/Zürich/Münster.

3 Federal Consitution of the Swiss confederation as adopted by popular vote on 18<sup>th</sup> April 1999, status as of 23<sup>rd</sup> September 2018: [www.admin.ch/opc/en/classified-compilation/19995395/index.html](http://www.admin.ch/opc/en/classified-compilation/19995395/index.html).

4 *Seelmann*, *Thomas von Aquin am Schnittpunkt von Recht und Theologie*, Festvortrag anlässlich der Thomas-Akademie der Theologischen Fakultät der Universität Luzern am 20. Januar 2000, 2000, Luzern.

its origins in the order of revelation and has a supernatural purpose, whereas the state has its origins in the order of nature and has an earthly (natural) purpose, determined by the social nature of humankind.

Therefore, *Aquinas* claims, the church is superior to the state in all things that concern the salvation of souls. It was from this idea that Western legal culture developed the concept of religious freedom.

With regard to the ‘bonum commune’, the common good, however, the state takes precedence, *Aquinas* claims: “More obedience is due to the state in relation to the earthly ‘bonum commune’.”<sup>5</sup> Thus, as a legal philosopher *Aquinas* limited the argument of religious radicalism [‘One must obey God more than man.’ (Acts 5:29)] to the area of the order of revelation. He also introduced the concept of natural law into the discussion on tolerance.<sup>6</sup> Yet, the huge potential of these lines of argument was not discovered and exploited until the 18<sup>th</sup> century.

As the Muslim author *Ahmet Cavuldak* has shown in a brilliant way,<sup>7</sup> Muslim countries are of a rather different legal tradition than the West, and, other than in the latter, there is no tradition to separate state and religion in the former. If such a separation were ever be to be developed, it would certainly take some time. The West as a legal community, however, is firmly rooted in the Western Church.<sup>8</sup> The Latin Church as an organisation has had a major influence on legislative traditions of the Western legal culture.<sup>9</sup> One may even raise the question of whether the direct democracy of the political communities in Switzerland does not actually go back to the canonical foundations of the Swiss parishes.<sup>10</sup>

Any close attachment of the state to one religious community that is taken to embody ‘the truth’, automatically turns both the followers of other religions and non-reli-

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5 *Leisching*, *Der Wandel in der Bestimmung des Verhältnisses von Kirche und Staat*, in: *Pfamatter/Fürger* (eds.), *Die Kirche und ihr Recht*, 1986, Zürich/Einsiedeln/Köln (ThB Bd. 15), p. 83–111 (89).

6 *Lehmann*, *Toleranz und Religionsfreiheit*. *Geschichte und Gegenwart in Europa*, 2015, Freiburg i.Br., p. 26.

7 *Cavuldak*, *Gemeinwohl und Seelenheil*. *Die Legitimität der Trennung von Religion und Politik in der Demokratie*, 2015, Bielefeld (Edition Politik Bd. 22).

8 *Loretan*, *Der Westen wurzelt in der Westkirche: eine kleine Rechtsgeschichte*, Feinschwarz, 10<sup>th</sup> January 2019: [www.feinschwarz.net/der-westen-wurzelt-in-der-westkirche/](http://www.feinschwarz.net/der-westen-wurzelt-in-der-westkirche/).

9 *Condorelli/Roumy/Schmoeckel* (eds.), *Der Einfluss der Kanonistik auf die europäische Rechtskultur, 2009–2012*, Köln/Weimar/Wien. Bd. 1–3, (Norm und Struktur Bd. 37); *Winkler*, *Geschichte des Westens*. *Von den Anfängen in der Antike bis zum 20. Jahrhundert*, 2009, München Bd. I–IV.; “Fernsehgespräch mit Heinrich August Winkler, *Der Westen, mächtig und angreifbar* (NZZ Standpunkte 2015)”: [www.youtu.be/Q2x6bdDSRQM](http://www.youtu.be/Q2x6bdDSRQM).

10 *Loretan*, *Kirche und Staat in der Schweiz*, in: *Haering/Rees/Schmitz* (eds.), *HdbKathKR*, 3<sup>rd</sup> edn. 2015, Regensburg, p. 1888–1913 (1890–1892).

gious people into second-class citizens. This is the reason why it has been argued since the Thirty-Years' War that the state has to be neutral<sup>11</sup> in its relationship to the different religions and world views.<sup>12</sup> For the same reason it is also supposed to treat all citizens equally, whether they act on the basis of religious beliefs or not.

Fundamental rights have acquired an enormous importance in countries of the West and they have also become the prime instruments of judges to solve problems of integration. This is especially true for the individual's right to freedom of religion, both in terms of its positive and its negative aspect,<sup>13</sup> as it helps to focus on the religious needs of an individual rather than discussing questions of truth (or true vs. false belief), which would pose unsolvable problems.

*Julia Hänni* and *Konrad Sahlfeld* have studied topical Swiss court cases on religious freedom<sup>14</sup> and have analysed the following key questions: How are conflicts resolved between individuals and their religious community? What part does the state play in these religious conflicts within the communities?<sup>15</sup> Are human rights also respected in religious communities?<sup>16</sup> What is the relationship between collective free-

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- 11 *McCord/Adams*, Wahrheit und Toleranz. Zum 300. Todestag von John Locke (1632–1704), in: *Orientierung* 69, 2005, p. 47–48.
  - 12 *Engi*, Die religiöse und ethische Neutralität des Staates. Theoretischer Hintergrund, dogmatischer Gehalt und praktische Bedeutung eines Grundsatzes des schweizerischen Staatsrechts, 2017, Zürich.
  - 13 *Grotefeld*, Politische Integration und rechtliche Anerkennung von Religionsgemeinschaften. Überlegungen aus sozialetischer Sicht, in: *SJKR* 1999, 2000, Bern, p. 107–143 (135).
  - 14 *Hänni*, Glaubens- und Gewissensfreiheit: Überblick über die aktuelle Auslegung von Art. 15 BV, in: *Hänni/Heselhaus/Loretan* (eds.), Religionsfreiheit im säkularen Staat. Aktuelle Auslegungsfragen in der Schweiz, in Deutschland und weltweit, 2019, Zürich, p. 1–18; *Heselhaus*, Die Religionsfreiheit nach Art. 9 EMRK als Rahmen für aktuelle Rechtsfragen in der Schweiz, in: *Hänni/Heselhaus/Loretan* (eds.), Religionsfreiheit im säkularen Staat. Aktuelle Auslegungsfragen in der Schweiz, in Deutschland und weltweit, 2019, Zürich, p. 19–53; *Sahlfeld*, Aspekte der Religionsfreiheit im Lichte der Rechtsprechung der EMRK-Organe, des UNO-Menschenrechtsausschusses und nationaler Gerichte, 2004, Zürich (Luzerner Beiträge zur Rechtswissenschaft Bd. 3).
  - 15 *Loretan*, Grundrechte in den Religionsgemeinschaften – oder: Individuum contra Kollektiv, in: *Hänni/Heselhaus/Loretan* (eds.), Religionsfreiheit im säkularen Staat. Aktuelle Auslegungsfragen in der Schweiz, in Deutschland und weltweit, 2019, Zürich, p. 167–192.
  - 16 *Loretan*, Religionen im Kontext der Menschenrechte, 2010, Zürich (Religionsrechtliche Studien Bd. 1); *Kirchschläger*, Die Verantwortung von nichtstaatlichen Akteuren gegenüber den Menschenrechten, 2017, Zürich (Religionsrechtliche Studien Bd. 4).

dom of religion and the other fundamental rights as stipulated in a constitution?<sup>17</sup> Has the State violated its supervisory duty if pastors in the army, in public schools, hospitals or prisons commit sexual violence against people?<sup>18</sup> How does the State cope with the ‘many faces of Islam’?<sup>19</sup> How does the State argue against those representatives of religious communities who reject the secular rule of law? What are the consequences if persons offering spiritual care begin missionary activities in prisons, hospitals, schools or in the armed forces?<sup>20</sup> What happens to a religious leader or a religious community that does not accept religious freedom as an individual right and preaches death on converts? When do security measures restrict fundamental rights?

In Switzerland, matters such as the above are further complicated by the fact that the regulation of relations between state and religion falls under the jurisdiction of the individual cantons (cf. Art. 72 BV as quoted above). Thus, in actual fact there are twenty six solutions to any of these issues. In order to gain an overview, a typology is required, i. e. a classifications system that allocates individual cases to specific models. The issue cannot be addressed comprehensively, but only on the basis of examples. I have suggested such a typology in 2010.<sup>21</sup>

I shall now turn to the main question of spiritual care in three public institutions, namely health, education and military forces.

## II. Spiritual Care in the Public Health System

How is spiritual care organised within the Swiss public health system? Although this question seems to be a rather simple one, an exact and comprehensive answer would also require me to cite 26 solutions, one for each Canton and its specific solution to the underlying question of the relationship between state and religion. I would also have to provide you with Canton specific laws and principles arising from the fundamental

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17 *Loretan* (ed.), *Religionsfreiheit im Kontext der Grundrechte*, 2011, Zürich (Religionsrechtliche Studien Bd. 2); *Loretan*, *Wahrheitsansprüche im Kontext der Freiheitsrechte*, 2017, Zürich (Religionsrechtliche Studien Bd. 3).

18 *Loretan*, *Menschenrechte statt Privilegien*, Feinschwarz, 10<sup>th</sup> December 2018: [www.feinschwarz.net/menschenrechte-statt-privilegien/](http://www.feinschwarz.net/menschenrechte-statt-privilegien/).

19 *Manea*, *Ich will nicht mehr schweigen. Der Islam, der Westen und die Menschenrechte*, 2009, Freiburg i.Br., p. 80–95; *Manea*, *Women and Shari’a Law. The Impact of Legal Pluralism in the UK*, 2016, London.

20 *Manea*, *Der alltägliche Islamismus. Terror beginnt, wo wir ihn zulassen* (aus dem Englischen von Elisabeth Ranke und Claudia Van den Block), 2018, München.

21 *Loretan*, *Das kantonale Staatskirchenrecht oder Die rechtlichen Verhältnisse von Kirche und Staat in den 26 Kantonen der Schweiz*, in: *Gerosa/Müller* (eds.), *Katholische Kirche und Staat in der Schweiz*, 2010, Münster (KRB Bd. 14), p. 91–106.

rights particularly relevant in this context, namely freedom of religion and equality before the law.<sup>22</sup>

One of the most current problems is the fact that in some Cantons the law still presupposes the traditional relations between the state and *Christian Churches* only. However, this is not always completely satisfactory, because the constitutional requirements ought to apply to all patients, regardless of their religious affiliation.<sup>23</sup> Hence, the conditions under which spiritual care is being exercised have to be adjusted to the changed conditions of religious and ideological diversity.<sup>24</sup>

Questions about the meaning of life and transcendence acquire special significance in the last stages of life – brilliantly depicted in a literary way by the famous Swiss criminal law professor *Peter Noll* and his friend, the writer *Max Frisch*.<sup>25</sup> It is within this context that spiritual care in Switzerland has been shaped and developed: The National Guidelines on Palliative Care drawn up by the Federal Office of Public Health and the Swiss Conference of Cantonal Health Directors define palliative care as follows: ‘Palliative care includes the care and treatment of people with incurable, life-threatening and/or chronic progressive diseases. [...] Palliative care prevents suffering and complications. It includes medical treatment, nursing intervention, as well as psychological, social and spiritual support.’<sup>26</sup> Thus, spiritual care of patients is seen as an integral part of the overall concept of palliative care. This was already emphasised by the WHO definition of palliative care in 2002, which reads: ‘Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.’<sup>27</sup>

It is noteworthy that spiritual care, as it has been developed and as it has gained momentum in recent years, did not spring from academic theological reflection on ministry and the cure of souls. Rather, it has had its ‘Sitz im Leben’ (setting in life) in pal-

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22 *Pahud de Mortanges*, Die rechtliche Regelung der Spitalseelsorge – eine Übersicht, in: *Pahud de Mortanges/Schmid/Becci*, Spitalseelsorge in einer vielfältigen Schweiz. Interreligiöse, rechtliche und praktische Herausforderungen, 2018, Zürich (FVRR Bd. 35), p. 153–178 (154).

23 *Pahud de Mortanges*, op. cit, p. 153–178 (154).

24 *Könemann/Loretan* (eds.), Religiöse Vielfalt und der Religionsfrieden. Herausforderung für die christlichen Kirchen, 2009, Zürich (Beiträge zur Pastoralsoziologie Bd. 11).

25 *Noll/Frisch*, In the Face of Death, 1990, New York, [1<sup>st</sup> edn. 1984]).

26 Bundesamt für Gesundheit (BAG), Schweizerische Konferenz der kantonalen Gesundheitsdirektoren, Nationale Leitlinien Palliative Care, 2010, Bern, p. 8: [www.bundespublikationen.admin.ch/cshop\\_mimes\\_bbl/8C/8CDCD4590EE41ED6B5FCE83EDD643430.pdf](http://www.bundespublikationen.admin.ch/cshop_mimes_bbl/8C/8CDCD4590EE41ED6B5FCE83EDD643430.pdf).

27 WHO Definition of Palliative Care: [www.who.int/cancer/palliative/definition/en/](http://www.who.int/cancer/palliative/definition/en/).

liative care and, as *Claudia Kohli Reichenbach* and *Simon Peng-Keller*<sup>28</sup> have shown, it has been established through its special role in the field of medical care. Yet, we encounter another problem of definition here: Whereas palliative care has been defined sufficiently well (cf. above), this is not possible for spiritual care to the same extent. Even though there have now been established two chairs for spiritual care, one in Munich (at the University Hospital) and another one in Zurich (within the Faculty of Theology), a clear definition is still lacking.<sup>29</sup>

The professorship established in Munich provides us with some insight into the specific characteristics of spiritual care: ‘The professorship is attached to the Interdisciplinary Centre for Palliative Medicine; it is currently shared by a physician and a theologian. [...] Fundamental to the professorship’s understanding of spiritual care is the WHO definition of palliative care. Spiritual care [...] does not focus exclusively on palliative situations, but is also directed e.g. at people who are chronically ill and who are thus confronted with fundamental questions on the meaning of life. Spiritual care happens in a multi-religious context and takes a multi-religious perspective. It does not follow a specific religious approach but rather focuses on the ‘individual situation of each sick person’. The task of the professorship as stated is to further develop ‘spirituality as a potential resource in dealing with disease through the interaction of different professional groups.’<sup>30</sup> Here again medicine and theology meet, and a bridge has been built successfully between the secular and the religious. As a consequence, there is now also more quality management in hospital spiritual care.<sup>31</sup> *Peng-Keller* takes the view that ‘[t]he direction in which hospital [denominational] pastoral care in Switzerland will develop depends on how inter-professional Spiritual Care continues to be established in the local health care institutions. Due to the cantonal structure, conflicting developments are possible.’<sup>32</sup>

In 2010, the federal government launched the National Strategy for Palliative Care, which first focused on the medical and nursing standards for the implementation of palliative care, comprising care, financing, awareness, education and research.

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28 *Peng-Keller*, *Spitalseelsorge und Spiritual Care im Schweizer Gesundheitswesen. Analyse eines aktuellen Transformationsprozesses*, in: *Pahud de Mortanges/Schmid/Becci*, *Spitalseelsorge in einer vielfältigen Schweiz. Interreligiöse, rechtliche und praktische Herausforderungen*, 2018, Zürich (FVRR Bd. 35), p. 29–56.

29 *Kohli Reichenbach*, *Spiritualität im Care-Bereich. Begriffsklärungen zu Palliative Care, Spiritual Care und Spiritualität*, in: *Noth/Kohli Reichenbach* (eds.), *Palliative und Spiritual Care. Aktuelle Perspektiven in Medizin und Theologie*. 2014, Zürich, p. 11–22 (15).

30 *Kohli Reichenbach*, op. cit., p. 11–22 (15–16).

31 *Albisser*, *Qualitätssicherung in der Spitalseelsorge*, in: *Albisser/Loretan* (eds.), *Spitalseelsorge im Wandel*, 2007, Wien (RRD Bd. 5), p. 101–109.

32 *Peng-Keller*, op. cit., p. 29–56 (49–50).

‘In the second phase, mental, social and pastoral-spiritual support in palliative care increasingly became a focus of attention.’<sup>33</sup>

Hospital spiritual care concerns not only the health service (articles 118, 118a, 118b, 119, 119a BV) but also constitutional law on religion. Both sectors fall under the competence of the cantons. However, there are also fundamental rights to be observed. Art. 8 of the Swiss constitution ensures legal equality and Art. 15 of the Swiss constitution ensures the freedom of belief and conscience, also called religious freedom.

Is pastoral care an expression of the denominational self-conception of pastoral care workers? Or is there an understanding of trans-religious spiritual care? Our book on pastoral care was a plea for a denominational view on spiritual care.<sup>34</sup> Yet it is still unresolved which view will be the accepted one in the long run.<sup>35</sup> At any rate, the hospital has to provide the pastoral care workers with patient data, so that they can exercise this aspect of their religious freedom. ‘Every pastoral care worker, regardless of their religious affiliation, is a private individual and enjoys religious freedom. In addition, the hospital as a state institution is bound to religious neutrality.’<sup>36</sup> The fundamental right of the patients to pastoral or spiritual care creates at least a minimal obligation to the state to provide it. Who should be the gatekeeper for access to the hospital? How should the hospital deal with charismatic healers and their form of spiritual care when, from a nursing point of view, charismatic rituals and intense prayer are a significant burden on the patient who wishes to die?<sup>37</sup> Which organisations are entitled to call themselves religious communities? What are the criteria for a religious community? Among all these unresolved questions, I shall now concentrate on the question of data protection and religious freedom.<sup>38</sup>

As part of the research programme ‘Swiss Learning Health System’ (SLHS), a stakeholder dialogue<sup>39</sup> took place in Zurich on 9<sup>th</sup> July 2018. It was held on the topic ‘Religious freedom versus data protection: How can pastoral care in hospitals in the Canton of Zurich be ensured with regard to requirements for patient data protection?’

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33 *Tschanz Cooke, Grusswort*, in: *Noth/Kohli Reichenbach* (eds.), *Palliative und Spiritual Care. Aktuelle Perspektiven in Medizin und Theologie*, 2014, Zürich, p. 7–8 (7).

34 *Albisser/Loretan* (eds.), *Spitalseelsorge im Wandel*, 20017, Wien (RRD Bd. 5).

35 *Peng-Keller* (note 28), p. 29–56 (48–49).

36 *Pahud de Mortanges*, op. cit., p. 153–178 (156–157).

37 *Peng-Keller*, op. cit., p. 29–56 (51).

38 The part on data protection and religious freedom was written by my research assistant *Martina Tollkühn*.

39 Stakeholder dialogues are conducted on a regular basis within the research programme ‘Swiss Learning Health System’ (SLHS). Each dialogue session brings together renowned professionals, practicing experts and scholars who discuss questions arising within the research project.

The keynote speech and the discussions were planned and carried out by the research assistant, *Martina Tollkühn*.

The necessity for such a dialogue had emerged, since in recent years a rising awareness of individual rights to data protection had led to conflicts in the cooperation between hospitals and, in particular, external hospital pastoral workers. This problem has its roots in an increased use of electronic health records, which often leads to confusion as to whether pastoral care workers are allowed access to patient data or not. As a consequence, in order to protect patients or indeed to save time, contact with the hospital pastoral care system has often been minimised or even reduced. This procedure can make the daily work of hospital pastoral care extremely difficult.

To give two examples:

- A patient who is hospitalised may at first refuse pastoral care, yet at a later point they may change their mind. However, the hospital pastoral workers are not informed about this change of mind.
- A seriously ill patient is cared for by the hospital pastoral care team. Suddenly the health of the patient deteriorates. The pastoral workers are not informed by the hospital staff about the change. The patient passes away without pastoral attention, although he or she would have wished for it.

The policy brief of the issue presents the basic facts and the legal situation concerning the topic of denominational pastoral care. Then the current legal situation concerning data protection and religious freedom is described as based on the norms of Federal and Cantonal law. Subsequently, the ecclesiastical provisions on pastoral care in general and the special features of pastoral care in hospital settings in particular are presented.

The basic rights of the patients with regard to pastoral care can be determined on the basis of both state law and canon law. These must be brought into accordance with the provisions on data protection. In the Canton of Zurich, e. g., there is a cantonal regulation as to when the religious institutions may request and receive personal data of their members from state institutions. Listed hospitals are also included in these institutions.

Recommendations for action were formulated on the basis of legal requirements, although it remains to be seen whether these are sufficient to solve the problem. Another open question is whether there might be problems with the application of the law or whether possible obstacles might arise when it comes to applying the guidelines.

The policy brief is structured according to the guidelines as proposed by the Swiss Learning Health System. It describes the legal regulations, namely the state regulations on the federal level and for the Canton of Zurich, and then the regulations in ecclesiastical law (canon law) for the Roman Catholic Church as a whole and the particular Church of the Diocese of Chur, which Zurich is part of.

Hence, the policy brief explains the working method of Catholic Clinical Pastoral Care in Zurich as a highly professional pastoral care unit. Suggestions for improvement, possible obstacles, and examples taken from real-life interaction between hospital workers and medical professionals are also included.

The final result of the dialogue was as follows:

Participants in the stakeholder dialogue agreed on several measures to remedy the problems discussed (see above).

They also agreed that more research would be needed in the area of hospital pastoral care; research on topics related to pastoral care and the needs of patients would be suggested for master's and PhD theses.

### **III. Spiritual Care in the State School System**

#### **1. Legal Situation**

The Swiss constitution does not offer any legal provision for denominational pastoral care or religious education in state schools. In Switzerland, sovereignty is assigned to the individual cantons. These decide independently whether or not to introduce spiritual care or include the subject of Religious Education (RE) in the curriculum. Therefore, religious education and/or pastoral care at schools may take as many forms as there are cantons.<sup>40</sup>

#### **2. Swiss Concept of Diversity<sup>41</sup>**

In many cantons, Religious Education used to be denominational. However, within recent years, more and more pupils have taken to opting out, either because they nominally exercise their constitutional right to religious freedom (negative freedom of religion), or because they do not belong to any of the denominations who do not offer RE. This has caused several organisational problems for schools who have to deal with an increasing number of pupils roaming free within the premises during RE classes. Therefore, governing bodies, education authorities and local governments

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40 *Fuchs*, Zum Verhältnis von Kirche und Staat in der Schweiz, in: *Krautscheidt/Marré* (eds.), *Essener Gespräche zum Thema Staat und Kirche*, Bd. 5, 1971, Münster, p. 125–166 (164).

41 *Loretan*, Religionsunterrichtskonzepte und ihre rechtlichen Koordinaten, in: *Pahud de Mortanges/Tanner* (eds.), *Kooperation zwischen Staat und Religionsgemeinschaften nach schweizerischem Recht/Coopération entre Etat et communautés religieuses selon le droit suisse*, 2005, Zürich/Basel/Genf (FVRR Bd. 15), p. 357–387.

prefer a non-denominational subject which merely informs on and teaches *about* religion and can therefore be made compulsory for all.<sup>42</sup>

This change is facilitated by the fact that, unlike in Germany, in Switzerland the term and hence the school subject 'Religious Education' is not clearly defined. For example, the canton of Nidwalden is currently advertising for a teaching post of Religious Education for a secondary school. Prospective candidates are required to have a degree in Religious Studies or Theology, but no specific denominational affiliation is asked for.<sup>43</sup> In short: Someone who teaches religion no longer has to have a 'missio canonica' or 'vocatio' (teaching licence) conferred by a Christian church. This new 'teaching about religion'<sup>44</sup> is carried out by an impartial teacher who is not required to be affiliated to and licenced by a particular church.

In most Cantons, wherever there was or has been denominational RE, there was or has been also some provision for pastoral care, even to the level of high school and university<sup>45</sup>. As a consequence of non-denominational '[s]chool teaching about religions [, which lies] in the responsibility of the state'<sup>46</sup>, however, spiritual care by churches and religious communities has come to occupy less and less space in religiously neutral schools.

This leads to the decisive question whether pastoral care and denominational religious education actually do have any place in an ideologically and religiously neutral school or not. In a conference on ideological and religious neutrality in public schools<sup>47</sup>,

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42 Engi, op. cit, p. 282.

43 Kanton Nidwalden, Bildungsdirektion Mittelschule: [www.kollegistans.ch/wp-content/uploads/Adobe\\_Inserat-MS-Lehrauftrag-Religion-2019.pdf](http://www.kollegistans.ch/wp-content/uploads/Adobe_Inserat-MS-Lehrauftrag-Religion-2019.pdf).

44 Furer, 'Teaching about religion' – Religionskunde im Vergleich. Rechtsvergleichende und verhandlungstheoretische Betrachtung von integrierter Religionskunde in Frankreich und Religionskunde als gesondertem Fach im Kanton Zürich, 2012, Wien (RRD Bd. 13).

45 Katholische Kirche im Kanton Zürich, Katholische Mittelschulseelsorge: [www.zhkath.ch/organisation/fachstellen/dienststellen/mittelschulseelsorge](http://www.zhkath.ch/organisation/fachstellen/dienststellen/mittelschulseelsorge). Katholische Universitätsgemeinde Basel: [www.kug.unibas.ch/index.php/ueber-uns/kug](http://www.kug.unibas.ch/index.php/ueber-uns/kug).

46 Engi op. cit, p. 287–288.

47 Forum Christliche Studien, Veranstaltung vom 13.04.2018 "Weltanschaulich-religiöse Neutralität der öffentlichen Schule?": [www.foxs.ch/weltanschaulich-religioese-neutralitaet-der-oeffentlichen-schule/](http://www.foxs.ch/weltanschaulich-religioese-neutralitaet-der-oeffentlichen-schule/) (last accessed 11<sup>th</sup> January 2019). Cf. Tappenbeck/Pahud de Mortanges, Religionsfreiheit und religiöse Neutralität in der Schule. in: AJP/PJA (11/2007), p. 1413–1426.

arguments for<sup>48</sup> and against<sup>49</sup> religious education and spiritual care in state school were discussed. The argument that was found most convincing in favour of Religious Education was the following: With regard to religious education, the state does not grant privileges to the Churches but it grants fundamental rights to children and adolescents who need to be educated in a comprehensive way, encompassing all aspects of human life, including the religious aspect.<sup>50</sup> The constitution does not protect the citizens against individually undesirable religious influences by putting the values taught there into perspective, but rather by allowing students to opt out of denominational instruction altogether.

If we compare German law to Swiss law, we shall find a significant difference between the two: Article 7 (3) of the German Basic Law (Grundgesetz, GG) reads: '(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction.'<sup>51</sup>

The line of reasoning behind this is as follows. 'Insofar as the State has committed itself to ideological neutrality, i. e. as the state restrains from satisfying the religious needs of the people itself, it leaves this right to the religious communities, and this also includes the realm of public schools.'<sup>52</sup> Accordingly, non-denominational instruction is limited to those who are not members of any denomination that may hold RE classes under Art. 7 GG. As yet, this line of reasoning has not found much support in Switzerland.

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48 Loretan, *Konfessioneller Religionsunterricht an der Schule – eine Ausnahme zur religiös-weltanschaulichen Neutralität des Staates?*, talk given on 13<sup>th</sup> April 2018 (response by Rachel Katzenstein): [www.foxs.ch/weltanschaulich-religioese-neutralitaet-der-oeffentlichen-schule/](http://www.foxs.ch/weltanschaulich-religioese-neutralitaet-der-oeffentlichen-schule/).

49 Engi, *op. cit.*, p. 267–318.

50 Rees, *Der Religionsunterricht und die katechetische Unterweisung in der kirchlichen und staatlichen Rechtsordnung*, 1986, Regensburg, p. 46.; Rees, *Katholische Schule und Religionsunterricht als Verwirklichung von Religionsfreiheit. Kirchenrechtlicher Anspruch und staatliche Normierung*, in: *Isensee u. a. (eds.), Dem Staate, was des Staates – der Kirche, was der Kirche ist*, FS Joseph Listl, 1999, Berlin (SKRA Bd. 33), p. 367–390.

51 Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100–1, as last amended by Article 1 of the Act of 23 December 2014 (Federal Law Gazette I p. 2438): [www.gesetze-im-internet.de/englisch\\_gg/](http://www.gesetze-im-internet.de/englisch_gg/).

52 Schambeck, *Religion in der Schule? Gründe für einen bekenntnisgebundenen Religionsunterricht*, in: *StdZ* 233 (2015), p. 544–554, 546.

Nevertheless, the freedom of religion in its positive aspect guaranteed under international and constitutional law must also be adhered to within the realm of state institutions such as school, armed forces and prisons. Seen from that point of view, the state cannot both insist on compulsory education and simultaneously ignore the field of religion altogether. As such, receiving religious education is an essential corollary of the fundamental right to religious freedom.

#### **IV. Spiritual Care in the Armed Forces<sup>53</sup>**

In Switzerland, responsibility for the armed forces has been moved from the cantons to the federal government. Therefore, jurisdiction for military chaplaincies has also been moved to the federal level.

##### **1. Organisation**

Spiritual care for members of the armed forces in Switzerland is provided mainly by specially commissioned pastoral workers. For this purpose, the army cooperates with three Christian Churches: the Protestant-Reformed Church, the Roman Catholic Church and the Old Catholic Church, which in Switzerland is called the Christian Catholic Church. Since 1883, army chaplains have formed an integral part of the army structure. They have been wearing uniforms and have been given the rank of captain on the basis of their official function. Nowadays, the education and training as well as the employment of military chaplains lies within the responsibility of the head of personnel of the armed forces, together with one Catholic and one Protestant chief military worker. The military chaplains work together with military staff in the military operational area (brigade staff) and training schools (teaching associations). However, due to their ecclesiastical mission, they enjoy a high degree of independence and have no tasks of military leadership or control.

Military spiritual care is ecumenical:

- There is one organizational unit of spiritual care for the armed forces, which comprises all three denominations.
- The military chaplains of the three denominations complete the same training together.
- As a rule, a military chaplain looks after their companies or training units alone and with ecumenical openness. If several chaplains are in charge of

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53 Written in German by *Urs Brosi* (former chief Roman Catholic army chaplain).

the same institution, they usually divide the personnel according to language and cultural background rather than denomination.

## **2. Staff**

In order to become a chaplain to the armed forces, applicants are required to have a degree in theology, practical experience in the ministry as well as in pastoral care and a recommendation from their respective Church authorities. The Roman Catholic chaplains were originally all priests, but since 1992 deacons and pastoral workers have also been admitted, and since 2000 there have been female pastoral workers as well. Future military chaplains have to complete a 5-month recruit school (basic military training) or, alternatively, a short six-week military training. The training as a chaplain to the armed forces takes another three weeks.

In Switzerland, general conscription continues to exist. All men residing in Switzerland and who have Swiss citizenship must do either military service or an alternative civilian service. The basic idea of the combination of citizen and soldier ('the soldier as citizen in uniform') is also reflected in the part-time activity of the military chaplains. They work full-time as pastors in parishes and at the same time serve as military chaplains between 5 and 20 days a year until they reach the age of 50.

Because spiritual care in the armed forces is carried out on a part-time basis, a large number of chaplains are needed. Thirty years ago, the Swiss Army employed more than 800 active military chaplains; currently there are only just under 200. The main reasons for the decline are the general shortage of pastors, the higher proportion of women in the ministry (for whom military service is voluntary), the higher proportion of foreign pastors and, finally, an older age at the beginning of pastoral work (formerly the average starting age was 28, today it is 45). This means that many begin their pastoral work when they are no longer compelled to military service. To compensate for the shortage of chaplains, the armed forces now finance four chaplains on a part-time basis, each employed on a basis of approximately 50%.

## **3. Task**

Over the decades, the focus of their task has shifted from preaching and liturgical celebration (proclamation and worship) to reflection and individual spiritual care (diakonia). Apart from the psychological and social service provided by the military chaplains, the profile of their spiritual care has lost some of its distinctiveness. However, military chaplains remain the undisputed representatives of a religious interpretation of the world and life.

While in other states army chaplains perform their religious (Christian) task only outside the official structures of the forces, namely during military recreation time, the military chaplains in Switzerland work during duty hours. Freedom of religion is granting leave to members of the armed forces if they do not wish to attend activities related to the army chaplaincy. But people are seldom aware of this right.

On the other hand, the Churches also pay attention to the plurality of religions. They contribute to a mutual understanding of members of different religions. This means, military chaplains are not primarily representatives of their Church, but act on the basis of their personal and subjective faith, provide suggestions on how to interpret the world and cope with life, and on how to respect cultural and religious differences.

The members of the armed forces perceive the military chaplains as experienced consultants who are not within the chain of command and are therefore considered independent and trustworthy. In mental stress situations, which are not uncommon in recruit school, members of the armed forces, regardless of their own creed or belief system, appreciate the offer of spiritual care.

As we have now seen, with the exception of more centrally organized responsibilities across cantonal borders in the case of the armed forces, the situation here is similar to the ones within the public health system and public education: We encounter changes and re-alignments within the broader context of a federal state, whose legal provisions are firmly grounded in fundamental rights. Of those, it is the right to religious freedom that takes centre stage when it comes to the issue of pastoral or spiritual care, both in theory and practice.